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 090481

MANPOWER AND WELFARE  
 DIVISION

RELEASED

74-0583

B-180745

APR 26 1974

Mr. Montgomery K. Winkler  
 Administrator,  
 13th Congressional District  
 House of Representatives

Dear Mr. Winkler:

Your letter of February 21, 1974, referred to us a request by Mr. Harry B. Nestlerode that his social security retirement account be audited because he has earned in excess of the amount allowed for payment of retirement benefits during certain months in 1972 and 1973. He has returned some checks, and now seeks assistance in determining the exact status of his account.

There was some delay in obtaining Mr. Nestlerode's file because of the erroneous social security number on the information supplied to us. We received the file only recently, and regret the delay in responding to your request.

Our staff, together with Social Security Administration headquarters personnel, reviewed Mr. Nestlerode's benefits file and determined that

--the total amount actually paid to Mr. Nestlerode in 1972 was \$1,033.60 and in 1973 was \$641.30. The 1972 payments exclude the seven checks totaling \$1,730.60 which he returned to the Social Security Administration. In February 1974, he was paid an additional \$319.30 resulting from a review of his case records by the Social Security Administration Philadelphia Program Center. Therefore, Mr. Nestlerode has received total payments of \$1,994.20 for 1972 and 1973.

--he should have been paid benefits of \$1,670.20 for the 2 years. The correct amount is based on benefits of \$180.80 a month for March and May 1972, and \$218.10 a month for February, March, September, October, November, and December of 1973. In all other months during 1972 and 1973, Mr. Nestlerode was not eligible for benefits due to his high rate of earnings.

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--Mr. Nestlerode has received an overpayment of \$324.

Under social security law, an overpayment must be withheld from benefits, or paid back unless both of the following conditions are met:

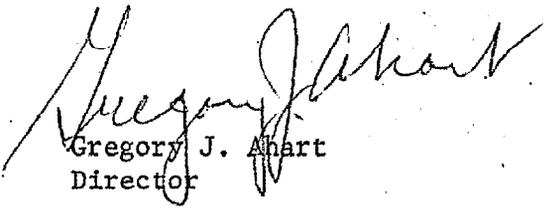
1. The overpayment was not the recipient's fault in any way and he cashed the checks because he thought they were correct, and
2. The recipient could not meet his necessary living expenses if he had to pay back the overpayment or have it withheld from his social security benefits; or it would be unfair for some other reason.

According to a Social Security official, the overpayment was their error, and Mr. Nestlerode will be given the opportunity to show that it would be unreasonable for him to repay this amount. Social Security will contact Mr. Nestlerode regarding this matter in the near future.

According to Social Security, Mr. Nestlerode received monthly checks of \$211.80 for January and February 1974. He should continue receiving checks in this amount during 1974 (1) until Social Security recomputes his benefits recognizing his additional earnings in 1972 and 1973, (2) as long as his earnings do not exceed \$2,400 annually and/or \$200 per month as provided in Section 203(f) of the Social Security Act, and (3) provided that there are no further changes in the law during the year.

We trust that the above information will serve the purpose of your request.

Sincerely yours,

  
Gregory J. Anart  
Director